

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CECIL McCLELLAN)	
Claimant)	
VS.)	
)	
HARRIS ENTERPRISES, INC.)	Docket No. 213,940
Respondent)	
AND)	
)	
CINCINNATI INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier requested review of the preliminary hearing Order dated November 20, 1996, entered by Administrative Law Judge Bruce E. Moore.

ISSUES

The Administrative Law Judge found that claimant timely filed his application for hearing under K.S.A. 44-534(b). Respondent and its insurance carrier contend the filing was untimely under the provisions of K.S.A. 44-557(c). That is the only issue before the Appeals Board on this review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The preliminary hearing Order entered by the Administrative Law Judge should be affirmed.

Claimant was injured in an automobile accident on June 19, 1995. Despite knowledge of the accident, claimant's employer, Victor Ruelas, did not file the accident report required by K.S.A. 44-557(a). On June 27, 1996, more than one year after the accident, claimant filed an application for hearing with the Division of Workers Compensation.

Before the 1993 Kansas Legislature modified K.S.A. 44-557(c), the statute provided:

“No limitation of time in the workmen’s compensation act shall begin to run unless a report of the accident as provided in this section has been filed at the office of the director if the injured employee has given notice of accident as provided by K.S.A. 44-520 and amendments thereto, except that any proceeding for compensation for any such injury or death, where report of the accident has not been filed, must be **commenced before the director** within one (1) year from the date of the accident, suspension of payment of disability compensation, the date of the last medical treatment authorized by the employer, or the death of such employee referred to in K.S.A. 44-520a and amendments thereto.” (Emphasis added.)

While the above-quoted language refers to proceedings “commenced before the director” the Kansas Supreme Court has held that a proceeding was commenced when the injured worker served written claim upon the employer. See Odell v. Unified School District, 206 Kan. 752, 481 P. 2d 974 (1971), and Ricker v. Yellow Transit Freight Lines, Inc., 191 Kan. 151, 379 P.2d 279 (1963). Later, the Kansas Supreme Court in Childress v. Childress Painting Co., 226 Kan. 251, 597 P.2d 637 (1979), held that the employer’s failure to file an accident report tolled the three-year period to file an application for hearing as required by K.S.A. 44-534(b) which provides:

“No proceeding for compensation shall be maintained under the workers compensation act unless an application for a hearing is on file in the office of the director within three years of the date of the accident or within two years of the date of the last payment of compensation, whichever is later.”

The Legislature modified K.S.A. 44-557(c), effective July 1, 1993, and changed the language from “must be commenced before the director within one (1) year” to “must be commenced by filing an application with the director within one year.”

Respondent and its insurance carrier contend the 1993 Legislature amended K.S.A. 44-557(c) to require the filing of an application for hearing within one year of the date of accident, suspension of payment of benefits, or date of last authorized medical treatment, whichever is later, whenever an accident report is not filed as required by the Workers Compensation Act. Conversely, claimant contends K.S.A. 44-534(b) is controlling and affords an injured worker three years from the date of accident or two years from the date of last payment of compensation to file the application for hearing.

For the reasons expressed below, the Appeals Board agrees with the Administrative Law Judge and claimant that K.S.A. 44-534(b) governs the time for filing an application for hearing whether or not an accident report is filed.

The 1993 modifications to K.S.A. 44-557(c) place that statute in direct conflict with K.S.A. 44-534(b). Respondent suggests the 1993 amendments to K.S.A. 44-557(c) can be reconciled with K.S.A. 44-534(b) by limiting the latter statute to those occasions when the

employer has filed the accident report required by K.S.A. 44-557(a) and limiting K.S.A. 44-557(c) to those occasions when a required accident report has not been filed. Under such reconciliation, respondent suggests that the two statutes apply to different situations and, therefore, there is no conflict. However appealing that approach may be to arrive at a simple solution, it produces a result so unreasonable, or absurd, as to indicate the Legislature did not intend that result.

Under the present system, when it receives an accident report the Division of Workers Compensation mails the injured worker an information packet which explains the workers compensation laws and requirements. Under respondent's attempt to reconcile K.S.A. 44-534(b) and K.S.A. 44-557(c), the worker who is provided the information packet and is theoretically knowledgeable of the Workers Compensation Act's requirements, is given three years from the date of accident to file an application for hearing. Conversely, the worker who is not provided the information packet and is theoretically ignorant of the Act's requirements, and who is not provided the information packet due to the employer's intentional or unintentional failure to file an accident report as required by the Act, is limited to only one year to file an application for hearing. Such an interpretation would penalize the uninformed worker but reward the neglectful employer who violates the Act's provisions and who may have committed an act deemed fraudulent and abusive by K.S.A. 44-5,120(d)(20).

When considering the Workers Compensation Act as a whole, it is incongruous to strictly interpret K.S.A. 44-557(c) to permit an employer to benefit from and avoid providing workers compensation benefits under a strict reading of K.S.A. 44-557(c) but at the same time be penalized and rendered subject to criminal sanctions and civil litigation by failing to file a required accident report. See K.S.A. 44-5,120, 44-5,121, and 44-5,125.

In addition to the incongruous results produced by respondent's attempt to reconcile the two statutes in question, the Appeals Board also finds the 1993 Legislature did not intend to shorten the time for filing an application for hearing as provided by K.S.A. 44-534(b). That conclusion is based upon a review of the documents located and provided by claimant which provide some insight into the legislative history. At the time the amendments to K.S.A. 44-557(c) were introduced, Representative Michael R. O'Neal, chairman of the judiciary committee and one of the amendment's sponsors, prepared a summary of the proposed legislation. That summary indicated the proposed amendments to K.S.A. 44-557 shortened the time to serve written claim from one year to six months when the employer failed to file an accident report. Based upon the legislative history as best it can be ascertained, the Legislature rejected the proposal to shorten the written claim period and without other known comment inadvertently modified K.S.A. 44-557(c)'s language to create the apparent conflict between that statute and K.S.A. 44-534(b) regarding filing the application for hearing.

The Workers Compensation Act is to be liberally construed to bring employers and employees within the Act's provisions. See K.S.A. 44-501(g). When interpretation of one section of the Workers Compensation Act appears to conflict with another section, the entire act should be construed according to its spirit and reason, disregarding as may be necessary the strict letter of the law. McKinney v. General Motors Corp., 22 Kan. App. 2d 768, 921 P.2d

257 (1996). As a general rule, statutes are construed to avoid unreasonable results. Wells v. Anderson, 8 Kan. App. 431, 659 P.2d 833, rev. denied 233 Kan. 1093 (1983).

Because the legislative history does not indicate the Legislature had any intent to modify the time period to file an application for hearing otherwise provided for in K.S.A. 44-534(b) and because applying K.S.A. 44-557(c) in contravention of K.S.A. 44-534(b) yields an unreasonable and incongruous result which cannot be reasonably explained, the Appeals Board finds that K.S.A. 44-534(b) controls the time for filing an application for hearing. Therefore, claimant's application for hearing was timely as it was filed within three years of the date of accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated November 20, 1996, entered by Administrative Law Judge Bruce E. Moore should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert A. Anderson, Ellinwood, KS
D. Steven Marsh, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director